

REMARKS

This Amendment is in response to the outstanding Official Action mailed July 14, 2004, the shortened statutory period for filing a response having expired on October 14, 2004. Applicant submits herewith a one-month extension petition to reset the deadline for responding to the Official Action to and including November 14, 2004. In view of the above amendments and below remarks, reconsideration of the Examiner's rejection is respectfully requested.

The Examiner has designated claims 5, 7-12, 14, 15, 18, 19, 21, 22 and 27 as being allowable if rewritten into independent form, including all limitations of any intervening claims and their base claim. Applicant has submitted herewith newly proposed independent claims 45 through 49. Claim 45 is based upon the rewriting of dependent claim 5 into independent form, claim 46 by rewriting dependent claim 8 into independent form, claim 47 by rewriting dependent claim 18 into independent form, claim 48 by rewriting dependent claim 21 into independent form, and claim 49 by rewriting dependent claim 27 into independent form. Accordingly, Notice of Allowance of claims 45-49 is now respectfully requested.

Of the rejected claims 1-44, claims 1, 17, 24, 33, 37 and 40 have been presented into independent form. The Examiner has rejected these claims under 35 U.S.C. § 103 (a) as being unpatentable over *Oddsens*, WO 00/25640 in view of *Zerbst*, United States Patent No. 2,062,156 in further view of *Benz et al.*, United States Patent No. 6,192,635. The Examiner states that *Oddsens* discloses the basic components of the claimed mounting bracket. *Zerbst* is cited as teaching the use of a pin on one member and a corresponding hole on another member so as to receive the pin thereby preventing twisting relative thereto. As to *Benz et al.*, the Examiner asserts that the reference teaches that it is known to have a pair of pins of non-circular

shape.

In the prior Official Action, the Examiner rejected the aforementioned claims as being obvious over *Oddsen* in view of *Zerbst*. In consideration of Applicant's response of March 19, 2004, the Examiner states that Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. In the current Official Action, the Examiner has added the patent to *Benz et al.* It appears then that the Examiner recognizes that *Oddsen* and *Zerbst* do not render obvious Applicant's claimed invention, hence, the recitation to renew cited *Benz et al.* patent. For the foregoing reasons, the Examiner's rejection is considered traverse and should therefore be withdrawn.

Turning to newly cited *Benz et al.* this reference is considered irrelevant to Applicant's claimed invention. *Benz et al.* discloses an angle bracket which is used in assembling partitions or safety walls in hazardous areas. Thus, at the outset, *Benz et al.* is irrelevant to Applicant's mounting bracket for use in mounting a device to a support surface as claimed by Applicant. As disclosed in *Benz et al.*, See Figs. 1 and 3, an L-shaped bracket 28 is provided. The bracket has a pair of legs of equal length having four projecting non-circular pins 30 on one leg only, and an elongated hole 20 in the other. In assembled relationship as shown in Fig. 3, the pins 30 are received within a groove provided in the side of the supporting section 34. The angled bracket is secured by a bolt 40 which passes through hole 18 in the bracket (See Fig. 1) and a bolt which passes through the elongated hole 20. As such, the angled bracket can only be assembled in one configuration. There is no requirement or desirability of the angled bracket in *Benz et al.* being oriented or assembled in any other arrangement other than as shown in Fig. 3. Further, because *Benz et al.* uses a plurality of pins, their shape is irrelevant in preventing the

twisting of the bracket. As noted, the pins are not received within an opening of corresponding non-circular shape, rather within an elongated slot. As a result, the angle bracket is free to be displaced longitudinally along the supporting section. See Col. 2, lns. 47-62.

Pursuant to Applicant's claimed invention, at least one pin is provided extending outwardly from each of the third and fourth flanges of the second member. The third and fourth flanges are constructed to be of unequal length. As described in the cited *Oddsens* reference, the second member can be arranged in different configurations depending upon the mounting bracket desired to be assembled. The incorporation of at least one pin on each of the flanges accommodates the different assembled orientations of the second member in the different mounting bracket configurations. Accordingly, as the angled bracket in *Benz et al.* can only be arranged in a single orientation, there is no need to provide at least one pin on each of the flanges of *Benz et al.* Since *Benz et al.* only discloses one flange having the protruding pins, it would not be obvious to modify the cited prior art to include pins on both flanges of an angled bracket. In fact, *Benz et al.* actually teaches away from Applicant's claimed invention of the pin protruding from the outer surface of both flanges of an angled bracket.

The Examiner's reference to *Zerbst* is equally deficient in teaching Applicant's claimed invention. As more specifically pointed out to the Examiner in Applicant's prior communication, the pin 24 in *Zerbst* is a cylindrical body received within a corresponding cylindrical hole in the attachment 13. Without more, the attachment member of *Zerbst* would be free to twist and rotate about the cylindrical pin. Accordingly, the use of a single cylindrical pin as suggested by the Examiner as being taught by *Zerbst* will not prevent twisting between element 15 and the attachment member 13.

This deficiency is not overcome by *Benz et al.* As noted, *Benz et al.* does not use the shape of the pins to prevent twisting. Rather, it is the arrangement of the pins on the angle bracket and their relationship to the groove in the supporting section which prevents twisting, not their non-circular shape.

*Zerbst* discloses that the function of the pin 24 is for alignment purposes. Specifically, *Zerbst* teaches that the proper position of attaching attachment member 13 to element 15 is achieved by the pin 24 being inserted into one of the openings in the attachment member (See col. 2, lns. 64-74.) In order to maintain the plate holder in a fixed erect position, *Zerbst* teaches the requirement for the use of a bolt 25 and its associated nut, in combination with the aforementioned pin. (See col. 2, lns. 74 *et seq.*) Accordingly, there is no disclosure in *Zerbst* of using the cylindrical pin 24 as a sole means for preventing twisting between element 15 and attachment member 13.

In summary, there is no disclosure in the prior art of Applicant's claimed invention of using either a single pin of non-circular shape or a pair of spaced apart circular pins on both flanges of an angled bracket to prevent twisting between the first and second members. Accordingly, the Examiner's rejection is traversed, and should therefore now be withdrawn.

In considering Applicant's within response, Applicant designates the rejected dependent claims as being allowable by virtue of their ultimate dependency upon submittedly allowable independent claims. Although Applicant has not separately argued the patentability of each of the dependent claims, Applicant's failure to do so is not to be taken as an admission that the features of the dependent claims are not themselves separably patentable over the prior art cited by the Examiner.

In view of the above, it is respectfully requested that these amendments be entered, and that prosecution on the merits of this application now be initiated. If, however, for any reason the Examiner does not believe such action can be taken, it is respectfully requested that she telephone Applicant's attorney at (908) 654-5000 in order to overcome any objections which she may have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Applicant's Deposit Account No. 12-1095 therefor.

Dated: November 12, 2004

Respectfully submitted,

By 

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